HEARST

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December 2, 2022

Hon. Ronnie Abrams
U.S. District Court, Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

Re: *In re Hearst Communications State Right of Publicity Statute Cases*,
            No. 21-cv-08895-RA (S.D.N.Y.)

Dear Judge Abrams:

We are counsel to Hearst Communications, Inc. ("Hearst"), the named
Defendant in the above-referenced matter. We write in response to Plaintiffs'
Notice of Supplemental Authority (ECF No. 53) filed November 30, 2022 in
connection with Plaintiffs' opposition to Hearst's pending Motion to Dismiss
(ECF Nos. 37-38, 42, 43).

Plaintiffs ask this Court to consider the recent decision in *Renderos*, in which
the Court denied a motion to dismiss a common law right of publicity claim
brought under California law. *Renderos v. Clearview AI, Inc*., No.
RG21096898, 2022 WL 17326440 (Cal. Super. Nov. 18, 2022). (No claim
was asserted in that case under Ca. Civ. Code § 3444.)

As the Court recognized at oral argument on Hearst's Motion, the Clearview
AI cases address very different facts than this case—the scraping and sale of
biometric information. The *Renderos* defendants used that information to
create something new and distinct as to each individual, which was marketed
and sold as such. The *Renderos* decision depends entirely on the Court's
finding that this sort of "appropriation" under California common law "should
be viewed without regard to whatever subsequent use the likeness might be
used." *Renderos*, 2022 WL 17326440, at *5. As set forth in Hearst's briefing
on its motion to dismiss and at oral argument, application of such a broad rule
to commonplace uses such as alleged here would be contrary to the history
and nature of common law misappropriation and right of publicity claims, and
certainly to statutory claims under the California (or any other jurisdiction's)

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right of publicity statute, which prohibits uses only for particular purposes, namely advertising, promoting, or otherwise selling a product. *See also* Ca. Civ. Code § 3444 ("**Use of another's name, voice, signature, photograph, or likeness** *for advertising or selling or soliciting purposes*") (emphasis added). It would also be contrary to the uniform judgment of every court to address the application of common law misappropriation or right of publicity laws to subscription list rentals. *See, e.g., Huston v. Hearst Commun., Inc.*, 53 F.4th 1097 (7th Cir. 2022). Setting aside that the *Renderos* Court was not considering a statutory claim, that Court has, respectfully, misapplied the common law to a case involving facts far removed from those alleged in this case, and does not provide relevant or persuasive authority here.

Respectfully submitted,

　/s/　　Jonathan R. Donnellan　　　
　　　　Jonathan R. Donnellan

cc: All counsel of record (by ECF)

* Not admitted or
  resident in New York